

**Remarks**

This Amendment is in response to the Final Office Action dated **May 30, 2007**. Claims 1-20 are pending in this application. Claims 8 and 9 have been withdrawn from consideration. The Office Action rejected claims 1-7 and 10-19 under 35 USC § 103 over Brown (US 2002/0007212) in view of Berra (US 2004/0215319); and rejected claim 20 over Brown in view of Berra and further in view of Oepen (US 2002/0161428).

Reconsideration in view of the following remarks is respectfully requested.

**Election/Restriction**

Applicant acknowledges the withdrawal of claims 8 and 9. These claims were previously indicted as reading upon the elected species due to ambiguity in the original restriction requirement.

Applicant notes that the characterization of the elected species in the current Office Action is different from the characterization in the original restriction requirement. The original restriction identified four species of invention, including species II “depicted in Figure 2, having proximal ends with unaligned second ends and distal ends having unaligned first ends.” See Office Action dated 2/26/07 at page 2.

Species II as presented in the original restriction did not mention any “aligned ends,” and therefore was interpreted as not requiring any “aligned ends.” In the response filed 3/20/07, Applicant noted this ambiguity and potential overlap between the identified species.

Had the restriction requirement identified each of the thirteen Figures as a separate species, Applicant would have interpreted the elected species as the specific structure shown in Figure 2. The elected species was not interpreted this way because the restriction identified only four species, and presented language describing the content of the species. The language presented did not include “aligned ends.”

The current Office Action characterizes species II as requiring “a proximal end having unaligned second ends and aligned first ends, and a distal end having unaligned first ends with aligned second ends” (emphasis added) See Office Action at page 2. The underlined portions of the quotation were not included in the original restriction requirement.

Although re-characterization of the species subsequent to an election is improper,

Applicant acknowledges the withdrawal and, for the purposes of avoiding delay and furthering prosecution of the application, has not petitioned for review of the restriction requirement.

### **Interview Acknowledgement**

Applicant thanks Examiners Tyson and Ho for the courtesies extended to Applicant's representative during the telephonic interview of August 9, 2007.

During the interview, the applied references were discussed with respect to claims 1 and 2.

With respect to claim 1, Applicant asserted that a person of ordinary skill in the art would not be motivated to modify Brown for the purpose asserted in the rejection – namely to “prevent kinking.” See Office Action at page 4. Brown teaches a problem of contact, binding and overlapping of adjacent stent segments on the inside of a bend, and a problem of large gaps on the outside of a bend in prior art stent designs. These problems can lead to improper vessel support, stent kinking, etc. See paragraph 0008. Brown then teaches a stent that avoids the problem of pinching and kinking by having peaks and troughs of adjacent stent bands offset from one another in a circumferential direction, and by having bands characterized by different and/or changing wavelengths. See e.g. paragraph 0012 and Figure 10. Thus, a goal of the Brown device is to avoid kinking, and Brown is not subject to kinking. Therefore, a person of ordinary skill in the art would not modify Brown as proposed in the rejection.

With respect to claim 2, Applicant argued that modification of Brown in a way that would meet the limitations of claim 2 would require a substantial reconstruction of the stent. The rejection would require abandoning the stent structure taught by Brown. A person of ordinary skill in the art would recognize that the reconstruction would require abandoning some or all of the inventive and desirable features embodied in the Brown stent, and therefore would not be motivated to make such a modification.

As indicated in the Examiner's Interview Summary, the Examiner is persuaded by Applicants arguments and has agreed to withdraw the finality of the Office Action. Accordingly, Applicants request withdrawal of the rejections.

**Conclusion**

Based on at least the foregoing remarks, Applicant requests withdrawal of the rejections presented in the Final Office Action dated 5/30/07.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

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